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SURGICAL INSTRUMENT SERVICE COMPANY, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SURGICAL INSTRUMENT SERVICE
COMPANY, INC.

Plaintiff/Counter-Defendant,

v.

INTUITIVE SURGICAL, INC.,

Defendant/Counterclaimant.

Case No. 3:21-cv-03496-AMO
Honorable Araceli Martínez-Olguín

**PLAINTIFF SIS's PROPOSED JURY
VERDICT FORM**

PLAINTIFF'S PROPOSED VERDICT FORM

Pursuant to the SCHEDULE AND PRETRIAL ORDER entered in this case (Dkt. 235), Plaintiff Surgical Instrument Service Company, Inc. ("SIS") hereby submits its separate proposed verdict form, as permitted by the Court's Order (Dkt. 235 Section II.A.6).

Instructions Concerning Verdict Form

A verdict form has been prepared for your convenience. I will review this form with you now, and afterwards you will take it with you to the jury room.

[Form of verdict read]

1 In order for you as a jury to answer a question, each juror must agree to the answer. In other
2 words, your answers to each question must be unanimous. Your foreperson will write the
3 unanimous answer of the jury in the space provided after each question, and will date and sign the
4 form of verdict when completed.

5
6 Nothing said in the verdict form is mean to suggest what your verdict should be. You alone
7 have the responsibility for deciding the verdict.

8 Verdict Form

9 Please answer the following questions in accordance with the Jury Instructions given to you
10 by the Court. Mark your answers by placing an X in the space provided.

11
12 **SIS's CLAIMS**

13
14 **Tying – Section 1 of the Sherman Act**

- 15 1. Has SIS proven, by a preponderance of the evidence and in accordance with the
16 instructions given to you, that Intuitive maintained a *per se* illegal tie of replacement and
17 repair of EndoWrist instruments to the purchase or lease of its da Vinci surgical robots?
18

19
20 YES _____ NO _____

21 ***Continue to Question No. 2.***

- 22
23 2. Has SIS proven, by a preponderance of the evidence and in accordance with the
24 instructions given to you, that Intuitive unlawfully tied the replacement and repair of
25 EndoWrist Instruments to the purchase or lease of its da Vinci surgical robots under the
26 rule of reason?
27

YES _____ NO _____

Continue to Question No. 3.

Exclusive Dealing – Section 1 of the Sherman Act

3. Has SIS proven, by a preponderance of the evidence and in accordance with the instructions given to you, that Intuitive's agreements with hospitals substantially foreclosed hospitals from purchasing replacement and repaired EndoWrist Instruments from competing suppliers in a manner that was unreasonable under the rule of reason?

YES _____ NO _____

Continue to Question No. 4.

Monopolization – Section 2 of the Sherman Act

4. Has SIS proven, by a preponderance of the evidence and in accordance with the instructions given to you, that Intuitive unlawfully acquired or maintained monopoly power in a relevant antitrust market that includes replacement and repaired EndoWrist instruments?

YES _____ NO _____

Continue to Question No. 5.

Attempted Monopolization – Section 2 of the Sherman Act

5. Has SIS proven, by a preponderance of the evidence and in accordance with the instructions given to you, that Intuitive unlawfully attempted to monopolize a relevant antitrust market that includes replacement and repaired EndoWrist instruments?

YES _____ NO _____

If you answered YES to any preceding Question, continue to Question No. 6. If you answered NO to all preceding Questions, skip to Question No. 8.

Injury to SIS

6. Did any of Intuitive's anti-competitive conduct you found unlawful in the previous questions cause injury to SIS in its business or property?

YES _____ NO _____

If you answered YES to Question No. 6, continue to Question No. 7. If you answered NO to Question No. 6, skip to Question No. 8.

Damages for SIS's Claims

7. We award SIS the following damages for Intuitive's anti-competitive conduct:

\$ _____

Intuitive's Counterclaim for Federal Unfair Competition

8. Has Intuitive proven, by a preponderance of the evidence and in accordance with the instructions given to you, that SIS has engaged in unfair competition and false advertising in violation of federal law.

YES _____ NO _____

Continue to Question No. 9.

Intuitive's Counterclaim for Statutory and Common Law Unfair Competition

If you answered YES to preceding Question No. 8, you must also answer YES to Question No. 9 below. If you answered NO to preceding Question No. 8, you must also answer NO to Question No. 9 below.

9. Has Intuitive proven, by a preponderance of the evidence and in accordance with the instructions given to you, that SIS has engaged in California statutory and common law unfair competition?

YES _____ NO _____

Continue to Question No. 10.

Intuitive's Counterclaim for Tortious Interference with Contract

10. Has Intuitive proven, by a preponderance of the evidence and in accordance with the instructions given to you, that SIS intentionally interfered with one or more contracts between Intuitive and its customers in a manner that was tortious?

YES _____ NO _____

If you answered YES to any of Questions No. 8, 9, or 10, continue to Question No. 11. If you answered NO to all of Questions No. 8, 9, and 10, then do not answer Question No. 11 and sign and date this Verdict Form and inform the Court that the jury has reached a verdict.

Damage for Intuitive's Counterclaims

11. We award Intuitive the following damages for its counterclaim(s) against SIS:

\$ _____

If you have completed this Question 11 after answering YES to any of Questions 8, 9, or 10, sign and date this Verdict Form and inform the Court that the jury has reached a verdict.

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CONCLUSION

SIS respectfully submits the above proposed verdict form for consideration by the Court.

Dated: October 28, 2024

McCAULLEY LAW GROUP LLC

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